

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

MICHAEL CHAMBERLAIN and TONYA CHAMBERLAIN,
INDIVIDUALLY, AND ON BEHALF OF THE ESTATE AND
WRONGFUL DEATH HEIRS AT LAW OF AUSTIN HUNTER
CHAMBERLAIN, DECEASED

PLAINTIFFS

VS.

CIVIL ACTION NO.: 4:21-cv-00170-SA-JMV

MAXLEY B. BAXTER, DAVID L. HOGLUND,
DRY DOCK BAR & GRILL, INC.,
JC RENTALS, INC., CHARLES MARTER,
PATRICIA RICHARDSON, and JOHN/JANE DOES 1-10,
JOINTLY AND SEVERALLY

DEFENDANTS

**DEFENDANT'S, MAXLEY B. BAXTER,
MOTION FOR STAY OF CIVIL ACTION**

COMES NOW, Defendant, Maxley B. Baxter, by and through undersigned
counsel and files this, his Motion for Stay of Civil Action, and would show unto the
Court the following to-wit:

1. On December 7, 2021, Defendant, Maxley B. Baxter, was indicted by the
grand jury of the State of Mississippi, County of Grenada, Circuit Court for Aggravated
Driving Under the Influence pursuant to Mississippi Code Annotated § 63-1-30. See
attached Exhibit "A".
2. The Complaint was filed on December 20, 2021, and a First Amended
Complaint was filed on January 6, 2022, asserting claims and causes of action arising
from the death of Austin Hunter Chamberlain. ECF Nos. 1 and 14.
3. Both the civil action and the criminal proceeding before the Circuit Court
of Grenada County, Mississippi, arise from the same alleged events, issues and facts.

4. The criminal proceeding before the Circuit Court of Grenada County, Mississippi, is ongoing and currently active on the Court's docket. See attached Exhibit "B". Mr. Baxter is represented in the criminal proceeding by James P. Vance, Esq. who has filed a Motion for Discovery and a Motion to Continue Trial Setting on Mr. Baxter's behalf. See, Exhibit "C" and "D". An Order of Continuance was entered by the Circuit Court of Grenada County on February 14, 2022, continuing the criminal proceeding until the next term of Court.¹ See, Exhibit "E".

5. Discovery has not commenced in the instant civil action and no scheduling order has been entered. The case management conference is currently scheduled for February 15, 2022.

6. This Court has authority to stay this civil action pending resolution of the criminal proceeding.

7. This Court has set forth six factors that must be addressed in the contemplation of granting a stay of a civil action that is parallel to a criminal proceeding. These factors are set forth below, and addressed fully in the Memorandum of Authorities accompanying this Motion:

1. The extent to which the issues overlap;
2. The status of the criminal case;
3. Interest of the Plaintiff in proceeding weighted against prejudice to the plaintiff from delay;
4. Interest of and burden of the Defendant;
5. Interest of the Court; and

¹ According to the 2021 Mississippi Judiciary Directory and Court Calendar published by the Mississippi Secretary of State, the next term of Court for the Circuit Court of Grenada County will be the fourth Monday of July, 2022.

6. The public interest.

Thomas v. City of Benoit, Mississippi, 2018 WL 5284615 (N.D. Miss. 2018)

8. Application of the foregoing factors to the facts and issues at the nexus of both this civil action and the parallel criminal proceeding weigh in favor of granting the Defendant's Motion to Stay this civil action pending resolution of the criminal proceeding.

WHEREFORE, the reasons set forth above, as well as the reasons addressed in Defendant's Memorandum of Authorities in Support of Motion for Stay of Civil Action, Defendant, Maxley B. Baxter, respectfully requests that this Court issue a stay of the instant civil action until such time as the criminal proceeding pending in the Circuit Court of Grenada County, Mississippi is concluded.

This the 14th day of February, 2022.

Respectfully submitted,

MAXLEY B. BAXTER, Defendant

/s/ *William A. Whitehead, Jr.*

William A. Whitehead, Jr., MSB #10152

William A. Whitehead, Jr., MSB # 10152
BRYAN NELSON, P.A.
P.O. BOX 18109
HATTIESBURG, MS 39404-8109
TELEPHONE: 601-261-4100
FACSIMILE: 601-261-4106
E-MAIL: wwhitehead@bnlawfirm.com

CERTIFICATE OF SERVICE

I, William Whitehead, the undersigned attorney for Defendant, Maxley B. Baxter, do hereby certify that I have this day electronically filed the above and foregoing pleading with the Clerk of the Court using the MEC system, which sent notification of such filing to the following:

J. Peyton Randolph, II, Esq.
Law Offices of J. Peyton Randolph, II
613 Steed Road
Ridgeland, Mississippi 39157
E-Mail: peyton@JPRII.com

Rick D. Patt, Esq.
Patt Law Firm, PLLC
Post Office Box 70
Madison, Mississippi 39130-0070
E-Mail: rick@pattlawfirm.net

Attorneys for Plaintiffs

Robert J. Dambrino, III, Esq.
Gore, Kilpatrick & Dambrino-Grenada
P.O. Drawer 901
Grenada, Mississippi 38901-0901
E-Mail: rdambrino@gorekilpatrick.com

*Attorney for Defendants, Dry Dock Bar & Grill, Inc., JC Rentals, Inc.
Charles Marter and Patricia Richardson*

M. Kevin Horan, Esq.
Horan & Horan, P.L.L.C.
1500 Gateway
Post Office Box 2166
Grenada, Mississippi 38902
E-Mail: horanandhoran1@bellsouth.net

Attorney for Charles Marter and Patricia Richardson

THIS the 14th day of February, 2022.

/s/ William A. Whitehead, Jr.
William A. Whitehead, Jr.